

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND; LOCALS 302
AND 612 OF THE INTERNATIONAL
UNION OF OPERATING ENGINEERS-
EMPLOYERS CONSTRUCTION
INDUSTRY RETIREMENT FUND;
WESTERN WASHINGTON OPERATING
ENGINEERS-EMPLOYERS TRAINING
TRUST FUND; and LOCAL 302
INTERNATIONAL UNION OF
OPERATING ENGINEERS,

Plaintiffs,

v.

BARRY CIVIL CONSTRUCTION, INC., a
Washington corporation,

Defendant.

NO.

COMPLAINT TO COLLECT TRUST
FUNDS AND UNION DUES

COUNT ONE

Plaintiff Operating Engineers-Employers Welfare, Pension, and Training Trust

Funds allege:

COMPLAINT TO COLLECT TRUST FUNDS
AND UNION DUES

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I.

They are unincorporated associations operating as Trust Funds pursuant to Section 302 of the Labor Management Relations Act of 1947, as amended, under the respective names of Locals 302 and 612 of the International Union of Operating Engineers-Construction Industry Health & Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Fund, and Western Washington Operating Engineers-Employers Training Fund, to provide medical, retirement, and training benefits to eligible participants. Plaintiffs' offices are located in King County, Washington.

II.

The Court has jurisdiction over the subject matter of this action under Section 502 (e)(1) and (f) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132 (e)(1) and (f) and under Section 301 (a) of the Taft-Hartley Act, 29 U.S.C. §185 (a).

III.

Venue is proper in this district under Section 502 (e)(2) of ERISA, 29 U.S.C. §1132 (e)(2), because Plaintiff Trusts are administered in this district.

IV.

Defendant is a Washington corporation.

V.

Defendant is bound to a collective bargaining agreement with Local 302 of the International Union of Operating Engineers (hereinafter "Local"), under which

1 Defendant is required to promptly and fully report for and pay monthly contributions to
2 the Plaintiff Trusts at varying, specified rates for each hour of compensation
3 Defendant pays to its employees who are members of the bargaining unit
4 represented by the Local (such bargaining unit members are any of Defendant's part
5 time or full time employees who perform any work task covered by the Defendant's
6 labor contract with the Local, whether or not those employees actually join the Local).
7

8 VI.

9 Defendant accepted Plaintiffs' respective Agreements and Declarations of
10 Trust and thereby agreed to pay to each of Plaintiff Trusts liquidated damages equal
11 to twelve percent (12%) of all delinquent and delinquently paid contributions, or
12 \$25.00 per month, whichever sums are greater, and twelve percent (12%) annual
13 interest accruing upon each monthly contribution delinquency from the first day
14 thereof until fully paid, as well as all attorneys fees and costs, including audit
15 expenses if applicable, which Plaintiffs incur in collection of Defendant's unpaid
16 obligations.
17

18 VII.

19 Since the first day of August 2016, Defendant has failed to promptly pay to the
20 Plaintiff Trust all amounts due as described above. Defendant submitted remittance
21 reports for the months of August 2016 and September 2016. The total contributions
22 owed for the months of August 2016 and September 2016 are \$18,237.25. Based
23 upon Defendant's unpaid contributions for the months of August 2016 forward,
24
25

1 Defendant is further obligated for liquidated damages, as well as interest accruing
2 and attorney's fees and costs.
3

4 **COUNT TWO**

5 Plaintiff, Local 302 of the International Union of Operating Engineers
6 (hereinafter "Local"), alleges:

7 I.

8 It is a labor organization with its principal offices in King County and brings this
9 action pursuant to Section 301 of the Labor Management Relations Act of 1947, as
10 amended.
11

12 II.

13 Defendant is a Washington corporation.
14

15 III.

16 Defendant entered into an agreement with the Local, whereunder Defendant
17 agreed to deduct from the periodic paychecks of its employees who are represented
18 by the Local, specified amounts for each hour of compensation Defendant pays to
19 those employees and to remit the total thus deducted each month to the Plaintiff
20 Local no later than the fifteenth (15th) of the month immediately following the month
21 in which such deductions were made.
22

23 IV.

24 Since the first day of August 2016, Defendant has failed to promptly pay to the
25 Local the total sum deducted from the periodic paychecks of Defendant's employees
26

1 who are represented by the Local. The total dues owed for the months of August
2 2016 and September 2016 are \$1,062.76.

3 WHEREFORE, Plaintiffs pray the Court as follows:

4 1. That the Defendant be compelled to render a monthly accounting to the
5 Plaintiffs' attorneys and set forth in it the names and respective social security
6 numbers of each of the Defendant's employees who are members of the
7 bargaining unit represented by the Local, together with the total monthly hours
8 for which the Defendant compensated each of them, for the employment
9 period commencing October 2016 to the date of service of this Complaint to
10 Collect Trust Funds and Union Dues, and for whatever amounts may
11 thereafter accrue.

12 2. That plaintiff Trust Funds be granted judgment against Defendant under
13 **COUNT ONE** for:

- 14 a. All delinquent contributions due;
- 15 b. All liquidated damages and pre-judgment interest due;
- 16 c. All attorneys fees and costs incurred by Plaintiffs in connection
17 with Defendant's unpaid obligations; and
- 18 d. Such other and further relief as the court may deem just and
19 equitable.

20 3. That Plaintiff Trusts be granted judgment against Defendant under **COUNT**
21 **TWO** for:

- 22 a. All amounts owing to it by the Defendant; and

b. Such other and further relief as the court may deem just and equitable.

DATED this 16th day of November, 2016.

REID, McCARTHY, BALLEW & LEAHY,
L.L.P.



Russell J. Reid, WSPA #2560
Attorney for Plaintiffs